IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.1128 OF 2005
IN
SUMMONS FOR JUDGMENT NO.652 OF 2004
IN
SUMMARY SUIT NO.1576 OF 2004

First Flight Couriers Ltd. .. Appellant

v/s.

Sify Limited .. Respondent

Mr.Vaibhav Joglekar i/by Mr.Milan Bhise for the appellant.

Mr.F.E.D'Vitre, Senior Counsel i/by M/s.D.H.Law Associates for the respondent.

CORAM : R.M.LODHA AND
D.G.KARNIK, JJ.

DATED : 13th December, 2005

P.C.

Heard Mr.Vaibhav Joglekar, the learned counsel for the appellant and Mr.F.E.D'Vitre, the learned senior counsel for the respondent.

2. Admit.

3. The advocate on record for the respondent waives service.

4. The appeal is heard finally at this stage.

5. Having examined the entire material, we find that the defence raised by the defendant that there was deficiency of service is not after

thought. As a matter of fact, way back by the communication dated 26th June, 2002, the defendant raised the dispute about the deficiency in service in asmuch as it was communicated to the plaintiff that the VPN link was shut down without any prior intimation causing the loss of goodwill and image in the market and inconvenience to all the defendant's regions and branches. Grievance was also raised by the defendant that due to the poor service and non-implementation of the solution by Satyam, the defendant has incurred heavy loss to the tune of more than Rs.1,00,00,000/-. This would clearly show that right from the beginning, the defendant has raised the grievance about the deficiency of service. This defence raised by the defendant in opposition to the summons for judgment cannot be said to be after thought and it cannot be said that the defendant has not been able to raise the triable issue.

6. Moreover, the contention of the plaintiff before the learned trial Judge that the amount paid by the defendant is not towards the service charges but towards the installation charges which the defendant was liable to pay even though the services were not rendered at the relevant time and that claim was not waived and that contention was contested by the defendant also dispute raises a serious question to be tried during the trial.

7. Then the defendant raised the plea that close scan of the plaintiff's suit would show that it is based on accounts and not on invoices and, therefore, also the summary suit was not maintainable. This contention cannot be said to be frivolous.

8. For all these reasons, we are satisfied that the defendant has been able to raise the triable issues in defence and was entitled to the grant of unconditional leave.

9. We, accordingly, set aside the order dated 3rd October, 2005. The defendant is granted leave to defend the suit unconditionally. The suit shall stand transferred to the list of commercial causes and be proceeded with accordingly.

10. The amount of Rs.15,00,000/- which has been deposited by the appellant pursuant to the impugned order may be withdrawn by the defendant.

No costs.

(R.M. LODHA, J.)

(D.G. KARNIK, J.)